IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1929 of 2004

CHAIRMAN,R.S.R.T.C.
V/S
MEHAR SINGH & ANR

Mr. SANGEET LODHA and Mr.ARJUN SINGH, for the appellant

Date of Order : 2.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant at length, and perused the record.

Two submissions have been made on behalf of the appellant to assail the award. The first being that no accident occurred from the bus of the appellant, and as such, no award could be passed. The second submission made is that the amount awarded is excessive, and is required to be substantially reduced.

I have considered the submissions, and have also perused the record, so also the findings of the learned trial Court.

Taking up the first submission, true it is, that the driver of the bus, who has appeared as N.A.W.1, has deposed that no accident occurred from his bus, and his bus was simply detained at Police Station Balotra, despite his contending that no accident was caused by his bus, and in this regard, certain persons purporting to be the passengers in the bus, have also been examined, but then, it is significant to note that the appellant, being the defendant No.2, had filed the written-statement before the Tribunal clearly contending that the accident occurred on account of the negligence of the injured himself, who suddenly crossed the road, and therefore, the Corporation is not liable for any compensation. Likewise, the defendant-driver also in his written-statement in para-27 has clearly pleaded that the bus was not being driven negligently, rather it was being driven on the

correct side with slow speed, and the accident occurred on account of the negligence of the victim, Mehar Singh himself, and therefore, he is not entitled to claim any compensation. In my view, these pleadings leave no manner of doubt that the factum of accident with the bus in question, causing injuries to the victim, is in no manner in dispute, and the only question requiring to be gone into was, as to whether the accident was on account of negligent driving of the bus, or on account of the negligence of the victim himself. Considering the matter from this point, I find that the claimants have led evidence, consisting of the victim himself, and A.W.3, Kalu Ram, who is an eye-witness, and both these witnesses have clearly deposed, and established that the victim was going on the right side of the road, leaving the road, and the bus came behind, and hit the victim, as a result of which, the victim received injuries. No evidence has been led on the side of the defendants to explain the accident, as to how it occurred, and how was it the out come of negligence of the victim himself. Since the stand of denial of happening of any accident with the bus in question cannot be accepted, it can very well be said that there is no rebuttal on the side of the appellant to controvert the evidence led on behalf of the claimants, and at the same time, nothing has been shown, as to why the sequence of events, as narrated by the two witnesses, cannot be believed. Not only this, I further find from the record that Ex.5, the site plan prepared by the Police during course of investigation clearly shows that after hitting the victim on the correct side of the road, the victim was dragged for a long distance, and there are tyres' skid marks on the road from a point much before the accident, till the point, the victim was dragged. This rather clearly shows that the accident did occur from the bus in question and the victim, who was proceeding along the correct side of the road, and after hitting him, he was dragged for a long distance. In that view of the matter, I do not find any sufficient ground to interfere with the finding of the learned trial Court on issue No.1, and the first contention is, therefore, negatived.

Taking up the second contention, it is clearly established on record, and has been found by the learned trial Court that the victim has lost his right eye, sustained two fractures on the head, and was to be given 55 stitches on the head. Notwithstanding this, the learned Tribunal has awarded only Rs.5000/- for each grievous injury, and Rs.2000/- for simple injuries, then has awarded a paltry lump sum amount of Rs.50,000/- for permanent loss of one eye, and another paltry amount of Rs.25,000/- for the future treatment, which the victim will have to receive. In my view, this amount cannot be said to be excessive on any parameters. Thus, the second submission also has no force, and is rejected.

The appeal thus, has no force, and is dismissed summarily. However, it is made clear that this dismissal of the appeal will in no manner prejudice the rights of the claimants, in case they choose to file appeal for enhancement of compensation.

(N P GUPTA),J.

/tarun/